

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:06-HC-2222**

UNITED STATES OF AMERICA)	
)	
)	MOTION FOR JUDICIAL REVIEW
v.)	OF CIVIL COMMITMENT UNDER
)	18 U.S.C. § 4248 and INTEGRATED
)	MEMORANDUM OF LAW
ANDREW RED STAR)	

The Respondent, Andrew Red Star (“Respondent” or “Red Star”), through undersigned counsel, hereby moves for judicial review of his civil commitment pursuant to 18 U.S.C. § 4248 to determine (i) whether the Attorney General has reasonably discharged his continuing legal obligation to cause the State of Montana to assume responsibility for Respondent’s custody, care and treatment and (ii) whether FCI Butner (“Butner”) is providing or even able to provide Respondent with a suitable rehabilitation or treatment program to meet his needs.

In support of this Motion, Respondent asserts that:

1. He was committed by this Court as a sexually dangerous person pursuant to 18 U.S.C. § 4248 on January 1, 2012. He has been incarcerated for the past 16 years after pleading guilty to two counts of aggravated sexual assault by force.
2. He has been in and out of the treatment program at Butner known as the Commitment and Treatment Program (“CTP”) on his own accord or because he was expelled by the program’s staff.
3. Upon information and belief, he is currently on at least three (3) psychotropic medications as well as one (1) testosterone diminishing drug, all prescribed by the

staff psychiatrist at Butner, Dr. Thomas Owens.

4. Respondent's mental condition has not improved but, in fact, he has regressed while under civil commitment at Butner to the point that he has in the recent past been placed on suicide watch (i.e., October 3, 2012).
5. Respondent's family, members of the Crow tribe, reside in Montana and are financially incapable of traveling to Butner to see him thereby exacerbating his depression, loneliness, frustration and anxiety leading or contributing to his erratic and self-destructive behavior.
6. Undersigned counsel has been in contact with the counsel to Senator Max Baucus of Montana on several occasions in an attempt to enlist assistance in locating a suitable facility in the State of Montana (or a neighboring State) capable and willing to assume responsibility for Respondent's custody, care and treatment and to provide a rehabilitation program to meet his needs as prescribed by 18 U.S.C. § 4248(d) and 18 U.S.C. § 4247(i)(c). Such efforts have to date been unavailing. Undersigned counsel has also been in communication with the office of the Montana Federal Public Defender. See email attached hereto as Exhibit "A".
7. Undersigned counsel has very limited ability and resources to locate a State facility in Montana to assume responsibility for the Respondent's custody, care and treatment which is, under the law, actually the continuing duty of the Attorney General. 18 U.S.C. § 4248(d).
8. Respondent has been institutionalized at Butner since early 2006. On the basis of his frequent telephone conversations and visits with Respondent (the most recent

being on October 5, 2012), it is the opinion of undersigned counsel that whatever “treatment” is available and/or being provided to Red Star is simply not meeting his needs. 18 U.S.C. § 4247(i)(c). In short, it is simply not working and undersigned counsel fears that Respondent will eventually “crash and burn” and harm himself further. With that in mind undersigned counsel wrote the email to Assistant United States Attorney Royster on September 10, 2012, attached hereto as Exhibit “B”.

9. Undersigned counsel contends that in his lay opinion Red Star’s chances at rehabilitation as well as his overall mental health condition would improve, and perhaps dramatically improve, if he were near members of his family in Montana while in a suitable facility.
10. The current state of affairs amounts to no more than “warehousing” of Red Star at Butner which is not a mental health facility.
11. In United States v. Shields, 597 F. Supp. 2d 224, 2009 U.S. Dist. LEXIS 11037 (D. Mass. 2009), Judge Patti B. Saris clearly identifies the specific obligations that the Attorney General of the United States has with regard to the custody, care and treatment of the committed person under the Adam Walsh Child Protection and Safety Act of 2006:

First, the Attorney General “shall make all reasonable efforts” to cause the state where the person is domiciled or was tried to assume responsibility for the custody, care and treatment of the committed person. 18 U.S.C. § 4248(d). “If, notwithstanding such efforts, neither... State will assume such responsibility, the Attorney General shall place the person for treatment in a suitable facility.” 18 U.S.C. § 4248(d).

Before placing the person in a particular facility, the Attorney General must “consider the suitability of the facility’s rehabilitation programs in meeting the needs of the person.” 18 U.S.C. § 4247(i)(c). The Attorney General must also consult with the Secretary of the Department of Health and Human Services regarding the “establishment of standards for facilities used” for commitments pursuant to the Act, as well as the “general implementation” of the Act’s provisions. 18 U.S.C. § 4247(i)(D).

The director of the facility in which a person is committed under the Act also has several responsibilities under the statute. First, the director is required to inform the committed person of “any rehabilitation programs that are available.” 18 U.S.C. § 4247(e)(2). In addition, the director must provide the committing court with “annual reports concerning the mental condition of the person and containing recommendations concerning the need for his continued commitment.” 18 U.S.C. § 4247(e)(1)(B) (stating that the committing court may also order copies of the report to be submitted to other persons).

Once committed to a facility by the Attorney General, the person is to remain in that facility until a State assumes responsibility for his custody, care and treatment.... Shields, supra at 239-240.

12. In the case at hand it is certainly questionable whether the Attorney General has made all reasonable efforts to cause the State of Montana to assume responsibility for the custody, care and treatment of Red Star, it is not clear that Butner is a suitable facility with regard to offering rehabilitation programs meeting the Respondent’s needs and there is no evidence that the Attorney General has made any efforts to continue his statutory duty to cause Montana to assume responsibility for Respondent.

WHEREFORE, Red Star moves the Court to review his civil commitment pursuant to 18 U.S.C. § 4248 to determine (i) if the Attorney General has made **all** reasonable efforts to comply with his on-going legal duty to cause the State of Montana to assume responsibility to provide for

the custody, care and treatment of Respondent and (ii) whether the “treatment” provided at Butner is even able to meet his needs.

Respectfully submitted this 9th day of October, 2012.

THE EDMISTEN WEBB & HAWES LAW FIRM

/s/ *William Woodward Webb*
WILLIAM WOODWARD WEBB
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CERTIFICATE OF SERVICE

This is to certify that the undersigned attorney has served a copy of the *Motion to Dismiss Commitment Action, or, In The Alternative, Application For Writ of Habeas Corpus* upon counsel and parties listed below properly addressed to:

G. Norman Acker, III
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Federal Medical Center
P.O. Box 1600
Butner, NC 27509

This the 9th day of October, 2012.

THE EDMISTEN WEBB & HAWES LAW FIRM

/s/ William Woodward Webb
WILLIAM WOODWARD WEBB
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Raleigh, North Carolina 27602
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woodywebb@ew-law.com

Date: 11/09/2010 02:32 PM

Subject: Re: Andrew Red Star

Hi Ms. Woods:

Thanks for your help! I will pass the information on to the US Attorney's Office.

Best,
Woody

-----Original Message-----

From: Nereida Woods

Sent: Monday, November 08, 2010 3:54 PM

To: Woody Webb

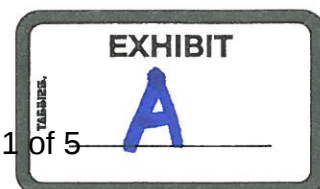
Cc: Mark Werner

Subject: Re: Andrew Red Star

Hello, today, I spoke with Mr. Randy Vetter, Admissions Coordinator/Social Work Discipline Chief at Warm Springs, MT 300 Garnet Way, Warm Springs, MT 59756, 406-693-7397. rvetter@mt.gov Mr. Vetter told me that in order for Warm Springs to consider accepting Mr. Red Star into their facility, FCI Butner needs to initiate an Interstate Compact Transfer Request. This request does not guarantee that Mr. Red Star will be admitted in Warm Springs. However, in order to start the process, either the treating psychologist, or facility administrator in FCI Butner needs to send the Interstate Compact Transfer Request for Mr. Vetter's consideration. Therefore, the next step will be to speak to Mr. Red Star's counselor to find out who his physician is.

Let me know if further assistance is required. Thank you.

Nereida Woods



Paralegal
FEDERAL DEFENDERS OF MONTANA
2702 Montana Avenue, Suite 101
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Fax (406) 259-2569

From: "Woody Webb" <woodywebb@ew-law.com>

To: <nereida_woods@fd.org>

Date: 11/05/2010 09:36 AM

Subject: Andrew Red Star

Ms. Woods:

Thank you so much for your help.

Best,
Woody Webb

William Woodward Webb
Attorney at Law
The Edmisten & Webb Law Firm
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Interstate Commission for Adult Offender Supervision

(Revised 10/18/06)

OFFENDER'S APPLICATION FOR INTERSTATE COMPACT TRANSFER

An application for transfer of supervision of an offender shall contain a copy of the original signed "Offender Application for Interstate Compact Transfer"

To: Enter the 2 letter identifier for the state where this form will be sent	Date: Enter date when this form is being prepared	Type of supervision: <input type="checkbox"/> Parole <input type="checkbox"/> Probation <input type="checkbox"/> Other: Identify the offender's status. If "other," explain	Is this case: Check either if applicable <input type="checkbox"/> Registered Sex Offender <input type="checkbox"/> Victim sensitive
From: Enter the 2 letter identifier for the state where this form is sent from	Phone #: Enter 10-digit telephone number (999-999-9999) of the Interstate Compact office completing this request	Fax #: Enter 10-digit fax number (999-999-9999) of the Interstate Compact office completing this request	

OFFENDER INFORMATION

Offender's full name (last, first, MI): Enter name as it appears on court documents		Offender number: Enter the offender's identifying number(s)	
AKA: Enter all of the offender's known aliases		Sending state#: Receiving state#:	
SS#: (if available) Enter social security # (999-99-9999)	FBI#: (if available) Enter Federal Bureau of Investigation identification #	Sex: Enter M or F	Race: Enter race of offender (White, Black, Asian, American Indian)
		DOB: Enter the offender's date of birth (05/14/2008)	

I, (Offender's Name), am applying for transfer of my parole/probation/other supervision from (sending state) to (receiving state). I understand that this transfer of supervision will be subject to the rules of the Interstate Commission for Adult Offender Supervision.

I understand that my supervision in another state may be different than the supervision I would be subject to in this state. I agree to accept any differences that may exist because I believe that transferring my supervision to (receiving state) will improve my chances for making a good adjustment in the community. I ask that the authorities to whom this application is made recognize this fact and grant my request for transfer of supervision.

In support of my application for transfer, I make the following statements:

1. If I am allowed to transfer my supervision to (receiving state), I plan to live with , at (full address/telephone #) until I am allowed by the supervising authorities to change my residence.
2. I will comply with the terms and conditions of my supervision that have been placed on me, or that will be placed on me by (sending state) and (receiving state).

3. I understand that if I do not comply with all the terms and conditions that the sending state or the receiving state, or both, placed on me, that it will be considered a violation and I may be returned to the sending state.
4. I agree to the release of any drug or alcohol treatment information from _____ (sending state) to any authorized person in _____ (receiving state) for the purpose of transferring my supervision. This consent remains in effect from this date (today's date) until I revoke this consent.
5. I agree to return to _____ (sending state) at any time I am directed to by the sending state or the receiving state. I know that I may have a constitutional right to insist that the sending state extradite me from the receiving state or any other state where I may be found. This is commonly called the right to extradition. But I also understand and acknowledge that I have agreed to return to the sending state when ordered to do so either by the sending or receiving state. Therefore, I agree that I will not resist or fight any effort by any state to return me to the sending state and I AGREE TO WAIVE ANY RIGHT I MAY HAVE TO EXTRADITION. I WAIVE THIS RIGHT FREELY, VOLUNTARILY AND INTELLIGENTLY.

Offender's signature: _____

Date: _____

Printed name: _____

Witness: _____

Date: _____

Printed name: _____

Woody Webb

From: "Woody Webb" <woodywebb@ew-law.com>
Date: Monday, September 10, 2012 1:07 PM
To: "Joshua (USANCE) Royster" <Joshua.Royster@usdoj.gov>
Subject: Andrew Red Star
Hi Josh:

Any chance you could make some more inquiries about treatment facilities in or near Billings, Montana for Mr. Red Star? For a variety of reasons (including a lot attributable to him in all honesty) he is really not making any progress at Butner.

I truly believe that if he gets back to Montana near his people and is in a suitable mental health facility there, he will improve. Absent such relocation I believe that he is just being "warehoused" at Butner.

Apparently there is a psychiatric clinic in Billings which could hopefully help. It was formerly called "Deaconness", I think.

Anyway, any assistance would be appreciated.

Best,
Woody

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